

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

)	
Request for Review of a decision)	
by the Schools and Libraries Division)	Administrator Correspondence Dated
for Robeson County, North Carolina)	October 12, 2016
Public Schools)	
)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

Request for Review

In accordance with Sections 54.719 through 54.721 of the Commission's Rules, Robeson County Public Schools (Robeson) appeals a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). The Administrator issued a Commitment Adjustment Letter citing gift rule violations. In accordance with precedent in the Kings Canyon¹ and Approach Learning² Decisions, Robeson asks that this Commitment Adjustment be overturned. This appeal comes timely submitted within 60 days of the Administrator decision. Robeson County Schools cites Kings Canyon and Approach Learning Decisions as precedent.

Separately, and equally important on an E-Rate policy level, Robeson has been improperly and illegally placed on FCC "Red Light" by the Administrator before the last opportunity to appeal. Robeson asks the Commission to immediately instruct the Administrator

¹ Kings Canyon Decision, DA 12-604, Rel. April 12, 2012, CC Docket 02-6, "Based on our review of the record, we find that Kings Canyon conducted a fair and open competitive bidding process under Commission rules."

² Kings Canyon Footnote 1.

to remove Robeson from Red Light and instruct the Administrator to refrain from imposing Red Light on applicants and Service Providers before the last opportunity to appeal.³

Requestor: Robeson County Public Schools

Billed Entity Number: 126994

FCC Registration Number 0012037131

Funding Request Number: 2209247

Form 471 Number: 813171

In correspondence dated October 12, 2016, the Administrator denied a Robeson appeal of a Commitment Adjustment for the 2011 FRN captioned above. The Administrator cited gift rule violations in its appeal denial. Specifically, the Administrator cited the Lazo Technologies decision (DA 09-1907) and the Sixth Report and Order (FCC 10-175) as justification for denial.

Robeson is at a complete and utter loss to understand the Administrator's logic with this decision. The Lazo situation involved widespread fraud and corruption far beyond the scope of two basketball tickets cited in Robeson and the Sixth Report and Order had not been issued when the alleged gift violation occurred. Robeson will show that the circumstances align with Kings Canyon and the Commitment Adjustment should be overturned.

Background

Robeson posted a Form 470 on December 21, 2006 indicating a desire for Internet Access services through the issuance of an RFP. Robeson issued an RFP for these services and held the RFP out for public response at least 28 days. Robeson evaluated the two bid responses in accordance with local policy and requirements of the E-Rate program. On February 6, 2007 a true and proper contract was awarded to Time Warner Cable Information Services for the

³ Administrator correspondence dated November 14, 2016, Notification of Withholding of Action Pending Red Light Rule.

service. Time Warner Cable offered the lowest price for eligible services from responses to the RFP. The application was thoroughly reviewed and scrutinized by the Administrator and funded.

On June 24, 2010 the Administrator made contact with Robeson under the guise of a Special Compliance Review (SCR) for this funding request. The Special Compliance Review was in response to receipt of evidence that the Service Provider had provided tickets and other gifts to several E-rate applicants, including Robeson County Public Schools. All Funding Requests for Funding Year 2010 were held until the SCR was completed. During the SCR, Robeson provided all requested data concerning the tickets. Robeson was not informed of the findings of the SCR, nor was there any statement by SLD to take corrective actions. The application was funded, services rendered and E-Rate discounts applied by the Service Provider. Robeson assumed, like other similar cases in the state, the issue had been resolved.

Discussion

Without question, the Administrator exceeded its authority with denial of this Funding Request Number (FRN). The tickets at the center of the Administrator Special Review and Commitment Adjustment (COMAD) were of little value and had no influence on the decision to select Time Warner Cable as Service Provider for this project. Time Warner Cable was the most qualified, lowest priced response to the RFP and Robeson made the selection as such.

The value of the tickets was established at \$150 based solely on a statement by Time Warner Cable. The Administrator appears to have taken that figure at face value rather than research ticket prices for basketball games at the venue. While Robeson does not have record of the ticket value, email correspondence from Time Warner Cable indicates the value should have been \$35 per ticket. Robeson agrees a reasonable price for the tickets would be \$35 each for a total of \$70. Robeson is at a loss as to why Time Warner Cable valued the tickets at \$150 in the

document submitted to the Administrator dated October 13, 2009. Robeson reiterates that it is incumbent upon the Administrator to determine fair value independent of a simple spreadsheet provided by Time Warner Cable. An online price search for North Carolina State men's basketball tickets at the same arena for the 2016 season indicate prices of between \$21 and \$45. It seems reasonable that a ticket for a 2007 game would have a value of no more than \$35.

E-Rate gift rules in place at the time did not specify a minimum or maximum value. The Sixth Report and Order clarifying gift rules was issued long after the Robeson tickets were used. The Administrator is attempting to retroactively apply FCC regulations *that did not exist* (emphasis added). Further, the Administrator links the gift of two inexpensive tickets to program rule violations in the Lazo Technologies Decision and Order on Reconsideration. The two cases are not similar by any means. Lazo involved an elaborate scheme involving money laundering, bribery, FBI investigations, and elaborate gifts.⁴ Robeson involved two tickets to a basketball game valued at a mere \$70.

The facts in Robeson align precisely to the facts in Kings Canyon except that the value of gifts to Kings Canyon was greater than the value of gifts to Robeson. In Kings Canyon the Commission found that there was a fair and open competitive bidding process and that Trillion offered the lowest price for services offered.⁵ Further, despite gifts, Kings Canyon complied with E-Rate procedures *that existed at the time it selected Trillion as its service provider* (emphasis added). Finally, there was no evidence of waste, fraud or abuse in the record.

Robeson conducted an open and fair competitive bidding process and selected the lowest price response to its RFP. This FRN was subject to a SCR when initially reviewed where all

⁴ Lazo Technologies, Inc. Order on Reconsideration, FCC 11-177, Rel. November 29, 2011 at 2.

⁵ Kings Canyon at 2.

application information is verified by the Administrator. Robeson passed the review and was funded. Robeson conducted a fair and open competitive bidding process and Time Warner Cable was the lowest price service provider. The SCR determined that the services were reasonably priced. The small gift received did not violate Robeson or North Carolina gift policies and did not influence the decision to award a contract to Time Warner Cable.

Red Light

The Red Light must be immediately lifted by the Administrator and the Commission must address the improper application of this severe and punitive enforcement instrument. When placed on Red Light, essentially all business with the FCC is suspended, denied or revoked. Robeson had an E-Rate application for Fund Year 2016 in review when Red Light was imposed. Under Red Light Regulations CFR Part 47 §1.1910,⁶ the 2016 E-Rate applications will be denied. Any E-Rate reimbursement payments due Robeson will be suspended.

A punishment as harsh as Red Light should be imposed only after careful consideration of relevant facts and all appeal opportunities exhausted. In this case, Red Light was imposed on November 14, 2016 – *almost an entire month before Robeson's FCC appeal deadline* (emphasis added). Red Light was imposed after an appeal to the Administrator, a not-for-profit company established by Commission regulation. The Administrator is specifically required to carry out Commission regulations and orders and "...not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress."⁷ The Administrator placed Robeson on Red Light before Robeson had any hearing before the Commission as it was imposed after appealing only to the Administrator. Such action by the Administrator is appalling and must be stopped immediately.

⁶ Title 47, Chapter 1, §1.1910: Effect of insufficient fee payments, delinquent debts, or debarment.

⁷ Title 47, Chapter 1, §54.702 (c).

Conclusion

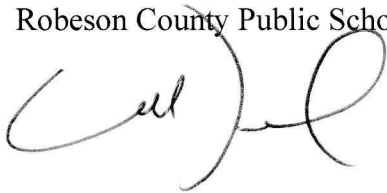
Robeson County Public Schools respectfully asks the Administrator to overturn the Administrator decision and determine that the situation with Robeson aligns with the facts in Kings Canyon, which the Commission granted. There was no waste, fraud, or abuse of program rules that surrounded the Lazo Technologies case cited by the Administrator. The gift was minimal and allowed under regulation and policy at the time and did not influence the selection decision at all.

Finally, Robeson asks the Commission to immediately remove Red Light status and instruct the Administrator to refrain from imposing the very punitive Red Light restriction on E-Rate participants before appeal periods have expired.

Respectfully submitted,

Everette Teal

Robeson County Public Schools

A handwritten signature in black ink, appearing to read 'E. Teal', with a large, stylized loop at the end.